United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED SEP 29 1958
Joseph W. Stewart
CLERK

No. 14,596

WILLIE BRANTLEY,

Appellant,

v.

EDWARD J. SKEENS,

Appellee

119

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Mathes seeks proceeds of $8000
insurance proceeds on Eliz. life

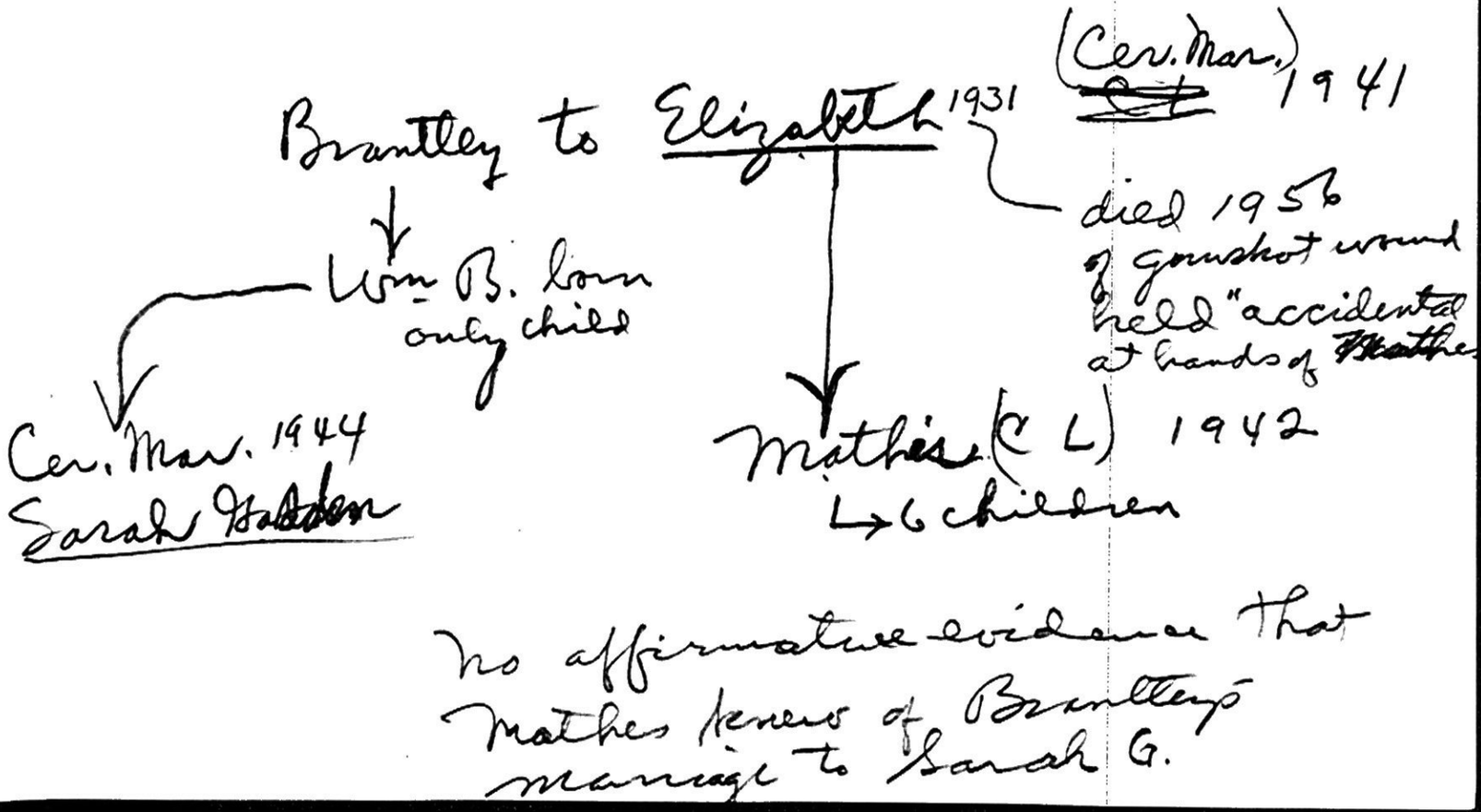
Skeens acting for 6 minor
children of

See Curran
Opinion 29
Brantley appeal

STATEMENT OF QUESTIONS PRESENTED

1. Did the Court below commit reversible error in holding that appellant Brantley was estopped from asserting the statutory claim granted a husband to the proceeds of a deceased wife's life insurance policy under the Federal Employees Group Life Insurance Act of 1954 where no beneficiary is named on the grounds that appellant Brantley had undertaken prior to his wife's death to enter into a marriage relationship with another woman?

2. On the basis of such a legal holding, together with a holding that illegitimate children are children within the meaning of the Federal Employees' Group Life Insurance Act of 1954, did the Court below commit reversible error in granting the motion for summary judgment of the guardian ad litem, Skeens, and in denying the appellant Brantley's motion for summary judgment?



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UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 14,596

WILLIE BRANTLEY,

Appellant,

v.

EDWARD J. SKEENS,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a summary judgment which was entered in favor of Edward J. Skeens, guardian ad litem and from a denial of a motion for summary judgment by plaintiff-appellant Brantley.

Jurisdiction of this cause was based on Section 11-305 and 11-306 of the District of Columbia Code (1951 Edition) and was invoked by the filing of the complaint (J. A. 1) to claim the proceeds of a life insurance policy.

This Court has jurisdiction to review the judgment under the provisions of Title 28, U.S.C. Sections 1291 and 1294 respecting appeals from the District Courts of the United States.

STATEMENT OF THE CASE

Plaintiff (Appellant) brought this action against the Metropolitan Life Insurance Company to recover the proceeds of a government employees' life insurance policy issued pursuant to the Government Employees' Life Insurance Act of 1954. The appellee Metropolitan Life Insurance Company filed an answer in which inter alia it avers that it was without knowledge or information sufficient to form a belief as to plaintiff's claim of entitlement to the proceeds of this policy; that persons other than appellant had made claim to said proceeds and in addition to this answer appellee by way of counter-claim sought to have these various claimants interpleaded.

The other claimants were Herbert Mathis who claimed the status of common law husband of the deceased, one William Brantley alleged to be the son of appellant Brantley and the deceased insured and six minor children alleged to be the children of the aforesaid Herbert Mathis and the deceased insured, Elizabeth Brantley also known as Elizabeth Mathis.

In the Court below a Guardian ad Litem was appointed to represent the interests of these minor illegitimate children (J. A. 13).

The facts which give rise to the controversy and about which there appears to be no dispute are these:

The insured-decedent, Elizabeth Brantley, was legally married on April 17, 1932 to Willie Brantley (Appellant) in the State of South Carolina (J. A. 5, 7). As a result of this union one child, William Brantley, was born. On or about 1936 the insured decedent, Elizabeth Brantley, left her husband in the State of South Carolina and migrated to the District of Columbia where she began cohabitation with one Herbert Mathis on or about January, 1942. No divorce was ever obtained by Elizabeth Brantley

or by her lawful husband Willie Brantley (J. A. 5, 27, 29). While living with Mathis in the District of Columbia Elizabeth begot, in conjunction with Mathis, the six additional children involved in this case. Approximately 10 years subsequent to his wife's leaving him Appellant Brantley, while still married to Elizabeth Brantley undertook through a marriage ceremony to enter into a marriage with another woman, Sarah Gadsden, in the State of South Carolina and did thereafter cohabit with said other woman.

In June 1956 Elizabeth Brantley then a government employee and an insured under the Federal Employees' Life Insurance Act departed this life without having designated as beneficiary the person to whom the proceeds of her life insurance policy were to be paid. Whereupon both Willie Brantley and Herbert Mathis filed claim to such proceeds as surviving spouse under the governing statutory provisions.

As a result of this death, these various claims culminating in the present litigation Metropolitan Life Insurance Company has paid into the Registry of the District Court the sum of $8,000.00 to be paid as that Court shall finally direct.

In the Court below all the parties (except the adult William Brantley, who was made a defendant but did not appear) including the Guardian ad Litem moved for summary judgment in their respective behalfs. The position of the Guardian ad Litem being that neither Brantley or Mathis were entitled to the proceeds and that as a consequence the minor children of decedent and Mathis were entitled thereto.

The motions for Summary Judgment having been heard the Court below ruled that Mathis was not the surviving spouse of the decedent since she was still lawfully wed to Brantley but that Brantley could not take precedence because he was estopped to assert that he was the surviving spouse of the decedent in view of his attempted marriage and cohabitation with Sarah Gadsden.

STATEMENT OF POINT

The trial Court erred in granting the motion for summary judgment filed by the guardian ad litem because the right of the surviving spouse to take the proceeds of an insurance policy under the Federal Employees' Life Insurance Act is declared by that Act and under the facts of this case there is no legal ground for the application of the doctrine of Estoppel to preclude such a surviving spouse from so taking.

SUMMARY OF ARGUMENT

1. The facts in the instant case do not set forth the essential elements of estoppel so as to bar appellant from taking pursuant to the Federal Employees' Life Insurance Act.

2. Where the Federal Employees' Life Insurance Act sets forth a statutory scheme of beneficiaries in lieu of a designated beneficiary, the trial court cannot substitute beneficiaries because of factors which are legally insufficient to set up a bar.

3. A void marriage is not a preclusion in law which prevents appellant from taking the benefits of insurance, pursuant to the statutory scheme, without a clear intent to the contrary set out in the Act itself.

ARGUMENT

The claim of Appellant Brantley is based upon the Federal Employees' Group Life Insurance Act of 1954. The pertinent provision is found in Title 5, USCA Section 2093, DEATH CLAIMS: ORDER OF PAYMENT.

> "Any amount of group life insurance and group accidental death insurance in force on any employee at the date of his death shall be paid, upon establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

> "First, to the beneficiary or beneficiaries as the employee may have designated by a writing received in the employing office prior to death;
>
> "Second, if there be no such beneficiary, to the widow or widower of such employee;
>
> "Third, if none of the above, to the child or children of such employee and descendants of deceased children by representation;
>
> "Fourth, if none of the above, to the parents of such employee or the survivor of them;
>
> "Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such employee;
>
> "Sixth, if none of the above, to other next of kin of such employee entitled under the laws of domicile of such employee at the time of his death.
>
> "If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the employee, or if payment within that period is prohibited by Federal statute or regulation, payment may be made in order of precedence as if such person had predeceased the employee, and any such payment shall be a bar to recovery by any other person." Aug. 17, 1954, c. 752, § 4, 68 Stat. 738.

It is perfectly clear that the Court below found that Willie Brantley was the lawful husband of the insured at the time of the death (J. A. 29) but invoking the doctrine of estoppel the trial court refused to permit Brantley to assert his statutory right to the proceeds of Mrs. Brantley's life insurance policy. In effect, what the trial court did was to judicially declare Willie Brantley civilly dead as regards to the matter sub judice. But it is submitted that there is no grounds here for the application of the doctrine of estoppel.

In the fairly recent case of Parker v. Sager, 85 U.S. App. D.C. 174 F (2) 657, this court has ruled that the law of estoppel in this jurisdiction is well settled. In that case the court said "The essential elements of equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or at least which is calculated to convey the impression

that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention or at least expectation that such conduct shall be acted on by the other party; (3) Knowledge actual or constructive of the real facts, as related to the party claiming the estoppel, they are: (1) Lack of knowledge and of the means of knowledge of the truth as to facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially. The propositions stated are so elementary that no further authority need be cited. It is obvious that under them there is no basis for equitable estoppel against Sager since the representation which he is asserted to have made, is * * * not one of fact but of law * * *".

In order to create an estoppel all the elements above listed must be found. Further the representation involved must be one of fact and not of law and beyond all this estoppel presupposes a transaction between the party claiming the estoppel and the party estopped. On all these counts the present case as one for estoppel fails.

Here plain and palpable error creeps into any attempt to invoke the doctrine of estoppel against appellant Brantley, since the essential criteria for the application of the doctrine do not exist. There was no transaction between the appellant and the appellee's wards; there was no prejudicial change of position on the part of the appellee's ward occasioned by any manifestation, statement, or conduct by the appellant. With regards to the second essential element with reference to the party estopped is concerned, the record is devoid of any showing that appellant Brantley intended that his conduct was to be acted upon by the wards of the guardian ad litem; indeed, no such inference could be drawn with respect to the deceased as it is to be noted that she entered into her meretricious relationship with Mathis some four years before his attempted marriage to Sarah Gadsden.

Assuming that the attempted marriage of appellant Brantley with one Sarah Gadsden in South Carolina be deemed a representation, then that representation would amount to a representation of law and not of fact. Since the legal effect of acts attempting to create status give rise to a question of law. The statute in question clearly gives an unambiguous right to surviving spouse, and the only question before the Court on a disputed claim is to ascertain the existence of the classes set forth in the statute. Where there is a surviving spouse, their right to the proceeds is absolutely established in the absence of a designated beneficiary. Tatum v. Tatum, 241 F. (2) 401.

The Court below found that the appellant had entered into a valid ceremonial marriage with the decedent, that the marriage had not been dissolved by death or divorce, and the only inference to be drawn from such a finding is that at the time of her death the appellant was the lawful widow of the decedent. The question of the meaning and effect of widow in the Federal Employees' Group Life Insurance Act was before the Court in the Tatum case, supra, and there the Court said:

> "The word 'widow' is not defined in the statute and we have found neither judicial nor administrative construction of it. However, it has been interpreted frequently under the analogous N.S.L.I. to mean lawful widow."

The Court below, in effect, found that the appellant was the lawful widow(er) but that he was estopped from claiming the proceeds. It is respectfully submitted, that a void marriage may not properly be made the basis of an estoppel, nor may estoppel be predicated on an invalid contract or other proceedings or invalid acts. Edge v. City of Lexington, 127 S. W. (2) 393.

The doctrine of estoppel is not favored in the law and should be sparingly applied, and then only in clear and cogent cases where all of the facts and circumstances justify the same. No such clarity and cogency is presented by this case; on the contrary to apply estoppel

under these circumstances would be to negate a clearly expressed Congressional intent by means of judicial amendment of legislation travelling under the guise of an equitable notion.

CONCLUSION

Appellant submits that the Order of the Trial Court granting the motion of the guardian ad litem for summary judgment should be reversed, and judgment entered for the appellant, Brantley.

Respectfully submitted,

JULIUS W. ROBERTSON

DOVEY J. ROUNDTREE

Robertson & Roundtree
1808 - 11th Street, N. W.
Washington 1, D. C.

Attorneys for Appellant

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APPELLANT'S APPENDIX

25 [Filed July 9, 1957]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

WILLIE BRANTLEY, 357 Race Street, Charleston, South Carolina Plaintiff v. METROPOLITAN LIFE INSURANCE CO. (A Corporation) 1 Madison Avenue, New York, N. Y. Serve: COMMISSIONER OF INSURANCE District of Columbia Municipal Center Washington, D. C.	Civil Action No. 1685-57

COMPLAINT TO COMPELL PAYMENT OF PROCEEDS OF FEDERAL EMPLOYEES LIFE INSURANCE POLICY, AND OTHER RELIEF

The complaint of the plaintiff herein respectfully shows to this Honorable Court the following matters and things:

1. The jurisdiction of this Court is evoked pursuant to Tit. 11, Sec. 306, District of Columbia Code, 1951 Edition, and the Federal Employees Group Life Act of 1954, Public Law 598, Chapter 752, 83rd Congress, Second Session, the amount in controversy being more than $3,000.00 exclusive of interest, costs, and attorneys' fees.

2. The plaintiff herein brings this action as the surviving spouse and widower of one ELIZABETH BRANTLEY, also known as, ELIZABETH MATHIS, who, at the time of her death, was an employee of the Federal Government, and as such employee covered by the provisions of the Federal Employees Group Life Insurance Act.

3. That the aforesaid, Elizabeth Mathis (Brantley) met her death accidentally, as a result of a gun shot wound, accidentally inflicted and that at the time of her death she was covered by the policy of insurance

issued pursuant to the Act, and entitled to accidental death benefits.

4. That the plaintiff and the decedent were married on, to wit, the 17th day of April, 1932, in the State of South Carolina, and that to this union there was born one child, William Brantley.

26 5. That at the time of the death of the aforesaid, Elizabeth Mathis (Brantley) the plaintiff herein was entitled to the proceeds of the group life insurance by virtue of the provisions of the Act which established the surviving spouse, that is the widow or widower, as the person to receive the proceeds in the absence of a named beneficiary, and no beneficiary was named by the decedent.

6. That the plaintiff has duly made claim on forms supplied for that purpose by the employing agency in accordance with the rules and regulations promulgated by the Civil Service Commission for accidental death benefits and payment for the same has been withheld.

WHEREFORE, the premises considered, the plaintiff prays for a judgment against the defendant in the amount of $8,000.00 representing the accidental death benefits payable under the terms of the policy.

2. That this Honorable Court pass an Order authorizing and directing the defendant to pay over to the plaintiff the proceeds of the insurance forthwith, and

3. Such other and further relief as the nature of the case warrants and as to this Honorable Court seems just and proper.

/s/ Julius W. Robertson
ROBERTSON & ROUNDTREE,
Attorneys for the Plaintiff
1808 11th Street, N. W.
Washington, D. C.

---

27 [Filed August 1, 1957]

ANSWER OF DEFENDANT TO COMPLAINT AND COUNTERCLAIM FOR INTERPLEADER

1. The defendant admits the allegations of paragraph 1 of the complaint, and admits that at the time of her death on June 29, 1956, one Elizabeth Mathis as an employee of the Government of the District of

Columbia was insured under group policy No. 17000-G issued by the defendant to the United States Civil Service Commission pursuant to the Federal Employees Group Life Insurance Act of 1954, and admits that by reason of the death of said insured the sum of Eight Thousand Dollars ($8,000) is now payable to the person or persons entitled thereto, which amount includes the accidental death benefit. This defendant is without knowledge or information sufficient to form a belief as to the remaining allegations of the complaint, and says that it has received claims to the proceeds of said policy not only from the plaintiff herein but also from one Herbert Mathis whose address is 1123 Oates Street, N.E., Washington, D.C., both claiming to be the widower of said decedent.

2. This defendant further says that under the provisions of said policy if the insured left no widower then the proceeds thereof are payable to her children in equal shares, and that the surviving children of the insured are as follows:

(a) William Brantley, also known as William Bradley
1218 Penn Street, N.E.
Washington, D. C.

(b) Elenora Louise Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(c) Patricia Ann Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(d) Herbert Mathis, Jr., a minor
1123 Oates Street, N.E.
Washington, D. C.

(e) Shirley Jean Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(f) Sherman Edward Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(g) Renee Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

COUNTERCLAIM FOR INTERPLEADER

1. This defendant adopts herein the allegations of its answer to the complaint and says that there is a substantial question herein as to whether the benefits under said policy are payable to the plaintiff herein or to the said Herbert Mathis, each of whom has made claim thereto as the lawful widower of the insured, or, in the event neither of said adverse claimants should establish his right thereto, whether such benefits should be paid to the surviving children of the insured as aforesaid.

WHEREFORE, this defendant demands:

1. That it may be allowed to pay the proceeds of said insurance, namely, the sum of Eight Thousand Dollars ($8, 000) into the Registry of this Honorable Court, there to abide the judgment of the court in the premises.

2. That the said Herbert Mathis and the surviving children of the insured named above be made parties defendant to this action, and that
29 a guardian ad litem be appointed for such of said children as are minors.

3. That the plaintiff herein, the said Herbert Mathis and the said children of the insured be required to interplead their respective claims herein.

4. That the court adjudge whether the plaintiff or the said Herbert Mathis or the surviving children of the insured are entitled to the proceeds of said insurance.

5. That this defendant may be allowed its costs and a reasonable attorneys' fee out of the sum paid into the Registry as aforesaid.

DRURY, LYNHAM & POWELL

By /s/ John M. Lynham
Attorneys for Defendant
Metropolitan Life Insurance Co.
312 Colorado Building
Washington 5, D. C.

[Certificate of Service]

AFFIDAVIT

STATE OF SOUTH CAROLINA, ss:

I Willie Brantley, also known as Willie Bradley, do hereby say upon oath the following:

1. That I am a native and resident of the State of South Carolina and have been such for the past 32 years.

2. That I have never lived or resided in another state in the United States except South Carolina, and Georgia.

3. That I have never lived or resided in any foreign country.

4. That I married Elizabeth H. Brantley (Mathis) April 17, 1932, and thereafter at no time filed suit or brought in proceedings to obtain a divorce from my wife, Elizabeth, in South Carolina or in any other state or place.

5. That I never received notice of or service of any divorce suit brought against me by my wife, Elizabeth.

/s/ Willie Brantley

[JURAT, Dated August 26, 1957]

CERTIFICATE

I, HARRY M. HULL, Clerk of the United States District Court for the District of Columbia, a court of record, hereby certify that I have made a search of the records of this Court from 1938 through 1956, with the result that no decree of divorce or annulment of marriage, between Elizabeth Brantley a/k/a Elizabeth Bradley and Willie Brantley a/k/a Willie Bradley was found.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said Court this 10th day of September, 1957.

HARRY M. HULL, Clerk

By /s/ R. M. Stearns
Deputy Clerk

PROBATE COURT FOR ALLENDALE COUNTY
ALLENDALE, SOUTH CAROLINA

CERTIFICATE

I, Olanthe Loadholdt, Clerk of the Court for Allendale County, South Carolina, a court of record, hereby certify that I have made a search of the records of this Court with the result that no decree of divorce or an-

nulment of marriage, between Elizabeth Brantley a/k/a Elizabeth Bradley and Willie Brantley a/k/a Willie Bradley was found.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said Court this 18th day of September, 1957.

/s/ Olanthe Loadholdt
Clerk of Court
Allendale, South Carolina.

No. 2643

STATE OF SOUTH CAROLINA
County of Allendale
IN THE PROBATE COURT

MARRIAGE LICENSE

To

Willie Brantley and Elizabeth Hamilton

A True Copy -- Issued 17th May, 1957

/s/ Carroll E. Reeves
PROBATE JUDGE

MARRIAGE LICENSE
Affidavits to Obtain License

STATE OF SOUTH CAROLINA,)
County of Allendale.)

I do solemnly swear that I am legally capacitated to marry; that my full name is Willie Brantley; that my age is 21 years and my place of residence is Fairfax, S. C.; my race is Negro; my nationality is American.

SWORN to before me this 16th day of April, A. D. 1932)
Louis Harley (L.S.)
Notary Public for South Carolina

his
Willie X Brantley
Mk

STATE OF SOUTH CAROLINA,)
County of Allendale.)

I do solemnly swear that I am legally capacitated to marry; that my full name is Elizabeth Hamilton; that my age is 18 years and my place of residence is Fairfax, S.C.; my race is Negro; my nationality is American.

SWORN to before me this 16th day of April, A. D. 1932)
Louis Harley (L.S.)
Notary Public for South Carolina.

her
Elizabeth X Hamilton
Mk

MARRIAGE LICENSE

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE.)

WHEREAS, It has been made to appear to me, Louis Harley, Judge of Probate for Allendale County, upon oath that Willie Brantley of Fairfax, S. C. and Elizabeth Hamilton of Fairfax, S. C. are legally capacitated to contract matrimony, and that their ages are, respectively 21 years and 18 years; and that their race is Negro and their nationality is American.

These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant.

Given under my Hand and Seal this 16th day of April A. D. 1932.

/s/ Louis Harley (LE)
Judge of Probate for Allendale County.

CERTIFICATE

THIS IS TO CERTIFY, That I, J. L. Harter, A Notary Public of S. C. did this day perform the marriage ceremony for the within-named persons at Fairfax, S. C., this 17th day of April, A. D. 1932.

/s/ J. L. Harter
Notary Public, S. C.

Signatures of Contracting Parties:

X
Willie Brantley
X
Elizabeth Hamilton

---

30 [Filed August 12, 1957]

ORDER FOR DEPOSIT OF FUNDS INTO REGISTRY OF COURT AND FOR INTERPLEADER

On motion of counsel for the defendant Metropolitan Life Insurance Company, it is by the Court this 12th day of August, 1957,

ORDERED, as follows:

1. That the defendant Metropolitan Life Insurance Company shall pay the sum of Eight Thousand Dollars ($8, 000) into the Registry of this Court, without interest or costs, being the amount due under its group

policy number 17000-G issued to the United States Civil Service Commission and insuring the life of Elizabeth Mathis, now deceased, there to abide the judgment of this Court.

2. That the following persons be, and they hereby are made parties defendant hereto and shall respond to plaintiff's complaint and to the counterclaim of the said Metropolitan Life Insurance Company:

(a) Herbert Mathis
1123 Oates Street, N. E.
Washington, D. C.

(b) William Brantley, also known as William Bradley
1218 Penn Street, N.E.
Washington, D. C.

31 (c) Elenora Louise Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(d) Patricia Ann Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(e) Herbert Mathis, Jr., a minor
1123 Oates Street, N. E.
Washington, D. C.

(f) Shirley Jean Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(g) Sherman Edward Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

(h) Renee Mathis, a minor
1123 Oates Street, N.E.
Washington, D. C.

3. That the plaintiff and the defendants named in the foregoing paragraph shall interplead their respective claims herein.

4. That a summons herein, together with a copy of the complaint, a copy of the answer and counterclaim and a certified copy of this order, shall be served on each of said defendants by the United States Marshal, requiring them to answer the complaint and counterclaim within thirty (30) days after such service, said summons to be returnable by the said United States Marshal within twenty (20) days after receipt of the same by him.

By the Court:

/s/ Edward A. Tamm

32 [Filed August 12, 1957]

MOTION TO DISMISS COUNTER-CLAIM FOR INTERPLEADER

Now comes the plaintiff by and through his attorneys, and moves this Honorable Court to dismiss the counter-claim for interpleader and for grounds of this motion respectfully shows this Honorable Court the following matters and things:

1. No claim for the proceeds of the subject insurance has been made by, or on behalf of, the minor children named in the counter-claim for interpleader or for, William Brantley, accordingly there is no basis for bringing them into the controversy.

2. The Federal Employees Group Life Insurance Act of 1954 sets forth the order of priority of payments to persons entitled to claim benefits and proceeds of insurance and the preferred claimant is the surviving spouse. Here, the plaintiff Willie Brantley, has submitted proof of his status as the surviving spouse, and he is entitled to the proceeds of insurance in the absence of any showing to the contrary.

3. The defendant would not be subject to a possibility of double payment by honoring the claim of the plaintiff inasmuch as the plaintiff has submitted proof of his status as the surviving spouse, accordingly the case does not call for interpleader.

4. Such other and further matters and things as may be alleged and presented upon a hearing of this motion.

Robertson & Roundtree
/s/ Julius W. Robertson
Attorneys for Plaintiff

NOTICE

TO: Messrs. Drury, Lynham, & Powell,
Attorneys for the Defendant,
Colorado Building,
Washington, D. C.

Please take notice that the points and authorities relied upon by the

33 plaintiff are served upon you herewith. If you oppose the granting of this motion the rules of this Court require you to file opposing points and authorities with the clerk of this Honorable Court within 5 days after

service upon you and to serve the same upon opposing counsel.

/s/ Julius W. Robertson

[Certificate of Service]

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34 [Filed August 12, 1957]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COUNTER-CLAIM

I. The pleadings herein.

II. F.R.C.P. Rule 12.

III. 35 Am. Jur. Marriage Sec. 58, 148, 150, 198, 199.

IV. D.C. Code 1951 Edition, Tit. 16, sec. 403 et seq.

/s/ Julius W. Robertson
Attorneys for Plaintiff
Robertson & Roundtree

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37 [Filed September 27, 1957]

ANSWER OF DEFENDANT HERBERT MATHIS TO COMPLAINT AND COUNTERCLAIM

Comes now the defendant, Herbert Mathis and answering the plaintiff's complaint represents unto this Honorable Court as follows:

FIRST DEFENSE

The complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

1. The defendant admits the jurisdiction of this Honorable Court.

2. The defendant admits that ELIZABETH MATHIS at the time of her death was an employee of the Government of the District of Columbia and was covered by the provisions of the Federal Employees Group Life Insurance Act, but denies each and every other material allegation contained in paragraph two of the plaintiff's complaint.

3. The defendant admits that ELIZABETH MATHIS, referred to in the plaintiff's complaint as ELIZABETH MATHIS (BRANTLEY) met her death accidentally, and that at the time of her death she was covered by the policy of insurance issued pursuant to the provisions of the Federal Employees Group Life Insurance Act, and that she was entitled to

accidental death benefits.

4. The defendant denies each and every material allegation contained in paragraph four of the plaintiff's complaint.

5. The defendant denies each and every allegation contained in paragraph five of the plaintiff's complaint.

38 6. The defendant is without information sufficient to answer the allegations contained in paragraph six of the plaintiff's complaint and therefore denies the same.

THIRD DEFENSE

The defendant HERBERT MATHIS avers that the plaintiff WILLIE BRANTLEY is neither the widower nor surviving spouse of ELIZABETH MATHIS but that the plaintiff entered into a valid and subsisting marriage with one SARAH GADSEN in the County of Charleston, State of South Carolina, as is evinced by the marriage license attached hereto and incorporated herein by reference, and the plaintiff has thereby waived any rights he may have had to the death benefits due to the surviving spouse of ELIZABETH MATHIS.

FOURTH DEFENSE
(Estoppel)

The defendant HERBERT MATHIS avers that the plaintiff WILLIE BRANTLEY is neither the widower nor surviving spouse of ELIZABETH MATHIS but that the plaintiff entered into a valid and subsisting marriage with one SARAH GADSEN in the County of Charleston, State of South Carolina, as is evinced by the marriage license attached hereto and incorporated herein by reference, and the plaintiff is thereby estopped to claim death benefits due to the surviving spouse of ELIZABETH MATHIS.

COUNTERCLAIM

1. The defendant HERBERT MATHIS brings this counterclaim for accidental death benefits as the surviving spouse of ELIZABETH MATHIS who, at the time of her death on June 29, 1956, was an employee of the Government of the District of Columbia and was insured under group policy number 17000-G issued by the Metropolitan Life Insurance Company to the United States Civil Service Commission pursuant to the Federal Employees Group Life Insurance Act of 1954.

2. By reason of the death of said insured, ELIZABETH MATHIS, the sum of Eight Thousand Dollars ($8,000.00) is now payable to HERBERT MATHIS as the surviving spouse and widower of the said ELIZABETH MATHIS.

39 3. The said HERBERT MATHIS has duly made claim for accidental death benefits upon the United States Civil Service Commission and the defendant Metropolitan Life Insurance Company and payment thereof has been withheld.

WHEREFORE, the premises considered, the defendant HERBERT MATHIS prays:

1. That the plaintiff's complaint be dismissed and his prayer for relief be denied.

2. That the defendant HERBERT MATHIS have a judgment on his counterclaim against the defendant METROPOLITAN LIFE INSURANCE COMPANY for Eight Thousand Dollars ($8,000.00) representing the accidental death benefits payable under the terms of the life insurance policy.

3. That this Honorable Court pass an Order directing the payment of the proceeds of the life insurance policy to the defendant HERBERT MATHIS.

4. That the defendant be awarded such other and further relief as to this Honorable Court may seem just and proper.

/s/ Curtis P. Mitchell
Attorney for defendant
Herbert Mathis
508 Fifth Street, N.W.
Washington 1, D.C.

Defendant demands trial by jury of all triable issues contained herein.

/s/ Curtis P. Mitchell

[Certificate of Service]

42 [Filed October 4, 1957]

ORDER DENYING MOTION TO DISMISS COUNTER-CLAIM FOR INTERPLEADER WITHOUT PREJUDICE AND APPOINTING GUARDIAN AD LITEM

This motion came on to be heard on the 3rd day of October, 1957, and thereupon, upon consideration thereof, the opposition thereto, and the argument of the counsel in open Court, and it appearing to the satisfaction of the Court that this motion should be denied without prejudice, it is, By The Court, this 4th day of October, 1957,

ORDERED, That the motion to dismiss the counter-claim be, and the same hereby is denied and the aforesaid motion shall stand denied without prejudice and it is further

ORDERED, That Edward Skens a member of the Bar of this Court be, and he hereby is, appointed guardian ad litem, to actively represent, investigate and represent the interests of the minor children herein and to report his findings to the Court.

/s/ John J. Sirica
JUDGE

[Certificate of Service]

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43 [Filed October 14, 1957]

REPLY TO COUNTER-CLAIM OF HERBERT MATHIS

The Plaintiff, Willie Brantley, by way of reply to the counter-claim filed herein, respectfully alleges and represents to this Honorable Court the following matters and things:

1. The plaintiff admits the truth of the allegations contained in paragraph one (1) of the counter-claim.

2. The plaintiff denies the truth of the allegations contained in paragraph two (2) of the counter-claim and further alleges and represents to this Honorable Court that the sum of Eight Thousand Dollars ($8,000.00) now in the registry of the Court is payable to Willie Brantley, the plaintiff herein, as the surviving spouse and widower of the said Elizabeth Mathis Brantley.

3. That plaintiff admits that the defendant, Herbert Mathis, has made claim for the accidental death benefits and for further answers to the allegations contained in paragraph Three (3) refers to the preceeding paragraph of this reply.

4. Further replying to the counter-claim the plaintiff respectfully alleges that the marriage between the plaintiff and deceased was at no time terminated and was valid at the time of her death and by the terms and provisions of the Federal Employees' Group Life Insurance Act of 1954, the plaintiff, Willie Brantley, is entitled to the total proceeds of the policy.

44 WHEREFORE, having fully replied to the counter-claim the plaintiff prays that the same be dismissed.

/s/ Julius W. Robertson
Attorneys for Plaintiff, Willie Brantley

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[Certificate of Mailing]

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52 [Filed November 14, 1957]

ANSWER OF GUARDIAN AD LITEM TO THE COMPLAINT OF WILLIE BRANTLEY

Comes now Edward J. Skeens, Esquire, Guardian ad Litem, and answering the complaint herein of Willie Brantley paragraph by paragraph replies as follows:

1. The allegations made in paragraphs one, three, four and six are admitted;

2. The allegations made in paragraphs two and five are denied.

The Guardian ad Litem relies on the following affirmative defenses to the complaint of Willie Brantley:

FIRST DEFENSE:

The complaint fails to state a claim upon which relief could be granted.

SECOND DEFENSE:

Willie Brantley was not a surviving spouse and widower of Elizabeth Brantley, the deceased, at the time of her death within the meaning of the

Federal Employees Group Life Act of 1954, or other federal laws.

THIRD DEFENSE:

Willie Brantley is debarred from claiming the status of widower or surviving spouse of Elizabeth Brantley because of a subsequent marriage to one Sarah Gadsen during Elizabeth Brantley's lifetime.

FOURTH DEFENSE:

Willie Brantley, having entered into a meretricious relationship with Sarah Gadsen and having deserted the deceased without just cause more than one and one half years ago, is estopped from claiming the proceeds impleaded in this cause by the Public Policy of the District of Columbia. Willie Brantley is conclusively presumed to have predeceased
53 Elizabeth Mathis within the meaning of the Federal Employees Group Life Act of 1954, Title 5 U. S. C. A. 2093.

FIFTH DEFENSE:

Equity principles require that the proceeds of the deceased's insurance policy be awarded to the Guardian ad Litem for the benefit of the six surviving minor children of the deceased, as her heirs and next of kin, in the absence of any contrary intention or other specifically designated beneficiary by the deceased, Elizabeth Mathis.

/s/ Edward J. Skeens
Guardian ad Litem
1500 Mass. Ave. N. W.

[Certificate of Mailing]

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54 [Filed November 14, 1957]

ANSWER OF GUARDIAN AD LITEM TO COUNTERCLAIM OF HERBERT MATHIS

Comes now Edward J. Skeens, Esquire, Guardian ad Litem, and answering paragraph by paragraph the counterclaim of Herbert Mathis replies as follows:

1. the allegation made in paragraph three is admitted;

2. the allegations made in paragraphs one and two, alleging that Herbert Mathis is the lawful surviving spouse and widower of Elizabeth Mathis, are denied.

The Guardian ad Litem relies on the following affirmative defenses to the counterclaim of Herbert Mathis:

FIRST DEFENSE:

The counterclaim fails to state a claim upon which relief could be granted.

SECOND DEFENSE:

The counterclaim fails to allege how, when and where or by what circumstance Herbert Mathis qualifies as a surviving spouse and widower of Elizabeth Mathis.

THIRD DEFENSE:

Herbert Mathis was not a surviving spouse and widower of Elizabeth Mathis, the deceased, at the time of her death within the meaning of the Federal Employees Group Life Act of 1954, or other federal laws.

FOURTH DEFENSE:

Herbert Mathis is debarred from claiming the status of widower or surviving spouse of Elizabeth Brantley, because he was never her lawful husband since the deceased was already and at all times married to
55 Willie Brantley, commencing April 16, 1932; and that said marriage had never been dissolved by any judicial decree.

FIFTH DEFENSE:

Herbert Mathis caused the death of Elizabeth Brantley, deceased, by means of a shotgun, for which he was charged and indicted by a grand jury of and for the District of Columbia for murder in the first degree, and he is therefore debarred from asserting the benefits of his wrong by the Public Policy of the District of Columbia. Herbert Mathis is conclusively presumed to have predeceased Elizabeth Mathis within the meaning of Title 5, U.S.C.A. §2093.

SIXTH DEFENSE:

Equity principles require that the proceeds of the deceased's insurance policy be awarded to the Guardian ad Litem for the benefit of the six surviving minor children of the deceased, as her heirs and next of kin, in the absence of any contrary intention or other specifically designated beneficiary of the deceased, Elizabeth Mathis.

/s/ Edward J. Skeens
Guardian ad Litem

[Certificate of Mailing]

51 [Filed November 14, 1957]

ANSWER OF GUARDIAN AD LITEM TO COUNTERCLAIM OF DEFENDANT METROPOLITAN LIFE INSURANCE COMPANY FOR INTERPLEADER

Comes now Edward J. Skeens, Esquire, Guardian ad Litem, and answering paragraph by paragraph the abovecaptioned counterclaim for interpleader, replies as follows:

1. the allegations made in paragraph one are admitted.

Wherefore, the Guardian ad Litem has no objection to any of the relief prayed for therein as to the Court may seem proper.

/s/ Edward J. Skeens
Guardian ad Litem

[Certificate of Mailing]

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56 [Filed November 14, 1957]

PETITION OF GUARDIAN AD LITEM TO COMPEL PAYMENT OF INSURANCE PROCEEDS

The cross-claim of the defendant, Guardian ad Litem herein, respectfully shows to this Honorable Court the following:

1. On the 12th day of August, 1957, this Honorable Court, the Honorable Edward A. Tamm presiding, ordered that, inter alia, the following minor children be made parties defendant in this cause: Elenora Louise Mathis, age 12; Patricia Ann Mathis, age 11; Herbert Mathis, age 9; Shirley Jean Mathis, age 6; Sherman Edward Mathis, age 7; Renee Mathis, age 1 -- each of whom resides at 1123 Oates Street Northeast, Washington, D. C.

2. On the 4th day of October, 1957, this Honorable Court, the Honorable John J. Sirica presiding, ordered that Edward J. Skeens, Esquire, a member of the Bar of this Court, be appointed to actively represent the interests of the abovementioned minor children as guardian ad litem; and by its order entered on the 8th day of November, 1957, this said Court authorized the Guardian ad Litem to defend the suits and file a claim for insurance proceeds on behalf of the minors.

3. Each of the abovenamed minors are the children and next of kin of the deceased adult, Elizabeth Mathis, formerly known as Elizabeth Brantley, nee Elizabeth Hamilton (hereinafter referred to as Elizabeth Mathis), late of the District of Columbia.

4. That Elizabeth Mathis met her death on June 29, 1956, as a result of an accidental shooting by the hands of her consort and paramour, Herbert Mathis.

57 5. At the time of her death Elizabeth Mathis was an employee of the District of Columbia and was insured under group policy No. 17000 G issued by the defendant, Metropolitan Life Insurance Company, to the Civil Service Commission pursuant to the Federal Employees Group Life Insurance Act of 1954, Public Law 598, chapter 752, 83rd Congress, 2nd Session (Title 5, U. S. C. A. §2093).

6. By reason of the death of said insured, Elizabeth Mathis, the sum of $8, 000. 00 (including accidental death benefits) is now payable to the persons entitled thereto in accordance with the provisions of the above stated Public Law; and that said sum has been paid into the Registry of this Court by the Metropolitan Life Insurance Company.

7. The Public Law (Title 5 U. S. C. A. §2093) provides that the death benefits shall be payable to: 1.) the beneficiary designated by writing; 2.) widow or widower of the employee; 3.) children; 4.) parents; 5.) executor; 6.) next of kin, PROVIDED that payment to any abovenamed person is not prohibited by Federal law or regulation.

8. The deceased insured, Elizabeth Mathis, has failed to designate a beneficiary by writing as required by the above stated public law.

9. The deceased insured left no surviving widower within the meaning of the above stated Public Law and other federal statutes and regulations. Willie Brantley and Herbert Mathis are conclusively presumed to have predeceased the deceased insured, Elizabeth Mathis, within the meaning of Title 5 U. S. C. A. §2093.

10. According to Equity principles, the public policy for the District of Columbia and the above stated public law, the minor children of the deceased, named in paragraph one of this petition and claiming

through their duly Court-appointed Guardian ad Litem are entitled to the death benefits and insurance proceeds as surviving children of Elizabeth Mathis, deceased.

WHEREFORE, THE PREMISES CONSIDERED, the Guardian ad Litem respectfully prays:

1. that Judgment be entered ordering the sum of $8000.00, heretofore paid into the Registry of this Honorable Court, to be paid to the Guardian ad Litem on behalf of the above named minor children;

58 2. that the Counterclaim of Herbert Mathis and Complaint of Willie Brantley herein be dismissed with prejudice; and

3. that such other and further relief be accorded as to a Court of Equity may seem just and proper.

/s/ Edward J. Skeens
Guardian ad Litem

[Certificate of Mailing]

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59 [Filed January 3, 1958]

REPLY TO CROSS-CLAIM
(Petition of Guardian ad Litem)

Comes now the plaintiff, by way of answer to the cross-claim of the Guardian ad Litem filed herein and respectfully shows to this Honorable Court the following matters and things:

1. The pleadings on file herein clearly indicate that the Federal Employees' Group Life Insurance Act of 1954 is controlling in this case, and the disposition of the proceeds of the policy is controlled by the terms of the act.

2. By the provisions of the aforesaid Act, payment of the proceeds may only be made to the plaintiff.

3. The minor children of the deceased, being illegitimate, are barred from taking the proceeds of this insurance by virtue of express provisions of other pertinent statutes of the United States.

/s/ Julius W. Robertson
Attorneys for Plaintiff
Robertson & Roundtree

[Certificate of Mailing]

63 [Filed March 8, 1958]

MOTION OF GUARDIAN AD LITEM FOR SUMMARY JUDGMENT
or in the alternative
TO STRIKE JURY DEMAND & TO ADVANCE CAUSE FOR A TRIAL

On behalf of the six minor defendants in this cause, Edward J. Skeens, Esq., the Guardian ad Litem respectfully prays that an order be entered herein granting summary judgment on all issues herein in favor of the Guardian ad Litem because no genuine issue of fact is disclosed by the pleadings, interrogatory, and exhibits heretofore filed in this proceeding pursuant to Rule 56, Federal Rules of Civil Procedure, 28 U. S. C. A., and shows the following:

FACTS

1. The insured, Elizabeth Mathis, married ceremoniously on April 17, 1932 to Willie Brantley, Plaintiff, in the State of South Carolina; and that as a result of this union one child was born, William Brantley, who is now an adult and is not a party to these proceedings;

2. While cohabiting as man and wife within the District of Columbia, insured and Willie Brantley separated for the last time prior to the year of 1946; and that thereafter until the present time, Brantley never instituted any form of divorce or annulment proceedings to terminate the aforesaid marriage;

3. That while insured was living, Plaintiff, Willie Brantley, entered into a second and successive ceremonial marriage with one, Sarah Gadsen, during the year 1946 in the State of South Carolina; and that since that time and thereafter, until the present time, Brantley has cohabited with Sarah Gadsen as man and wife in the State of South Carolina;

4. That within the year of 1946 and in the District of Columbia, insured and Defendant, Herbert Mathis, agreed to cohabit together and hold themselves out as man and wife without entering into a ceremonial

64 marriage; that the said arrangement continued until the death of the insured during which time six minor children were born as a result of such relationship as follows: Elenora Louisa Mathis, age 12; Patricia Ann Mathis, age 11; Herbert Mathis, Jr., age 9; Shirley Jean Mathis,

age 6; Sherman Edward Mathis, age 7; and Renee Mathis, age 1; and that each of the said minor children, the defendants herein, have been born and at all times resided within the District of Columbia;

5. That on June 29, 1956 within the District of Columbia, the insured met her death at the hands of defendant, Herbert Mathis, as a result of a fatal wound inflicted by a projectile propelled and fired by a weapon and in the possession of Mathis; That said Mathis was indicted on July 16, 1956 by a District of Columbia Grand Jury of Murder in the First Degree; That after pleading not guilty to said charge in Criminal Case No. 744-56 in this Court, a Jury was sworn on January 14, 1957 and three days later on January 18, 1957, Richmond B. Keech, a District Judge of this Court, entered a Judgment of Acquittal by Direction of the Court;

6. That on the said June 29, 1956 when insured departed this earth, she was domiciled and resident of the District of Columbia, she was an employee of the federal government within the District of Columbia, and she was insured by a policy executed within the District of Columbia which was in effect on the said date of her death and issued pursuant to the Federal Employees Group Life Insurance Act of 1954; that said policy provided for double indemnity in the event death was occassioned by accidental means; that pursuant to such policy the defendant, Metropolitan Life Insurance Company, has interpleaded the several defendants in this cause and has deposited the sum of $8,000 into the Registry of this Court pursuant to an order of Judge Tamm dated August 12, 1957;

7. That Willie Brantley, plaintiff and Herbert Mathis, defendant, each have duly filed and made identical claim as widower of the insured for such proceeds in accordance with the rules and regulations promulgated by the Civil Service Commission; and that payment has not been tendered to either of them;

8. That each minor defendant having been interpleaded herein are represented by this Guardian ad Litem pursuant to order of this Court
65 and he is authorized to prosecute their claim as children of the insured;

9. The Guardian ad Litem incorporates by reference any affidavit

filed on his behalf in support of this motion and the points and authorities attached hereto and made a part hereof.

10. Insured failed to designate a beneficiary in writing for insurance proceeds.

ARGUMENT

CLAIM OF WILLIE BRANTLEY:

A legal presumption exists that insured divorced Brantley and that his second marriage to Sarah Gadsen is also presumed valid. By his second marriage Brantley has abandoned the insured and his status as a widower and is deemed to have predeceased insured by the Group Life Act of 1954.

CLAIM OF HERBERT MATHIS:

Under D. C. law it is doubtful that a presumption exists to the effect that a common law marriage was validly established by insured and Mathis. If so, Mathis having been indicted and tried for killing insured cannot benefit by his wrong; therefore, he is deemed to have predeceased insured by the Group Life Act of 1954.

If the relationship with insured was meretricious due to impediment of prior undissolved marriage of insured, Mathis is not a widower. Mathis was never ceremoniously married to insured.

LEGAL ISSUE OF THIS CAUSE:

Whether either, Plaintiff, Willie Brantley, or defendant, Herbert Mathis can qualify as a widower of the insured, Elizabeth Mathis within the meaning of the Federal Employees Group Life Insurance Act of 1954?

CLAIM OF GUARDIAN AD LITEM:

The insured failed to designate a beneficiary. Who the widower may be is, therefore, immaterial because the intention of the insured governs and it is clear that she intended the children to receive her insurance proceeds and there is a D. C. Statute that creates such statutory intent by her. In any event, if the status of a widower is material,

66 Mathis and Brantley have failed to establish such status on behalf of either; and that, if either has sustained the burden of proving that he is a widower, then each of them are deemed to have predeceased the insured on grounds of public policy.

Whether the minor children are legitimate or illegitimate is immaterial as they are the actually the offspring of the insured. However, under D. C. law even illegitimate children can take and inherit from the mother.

Accordingly, the Group life act of 1954 specifies in order of preference that children of insured shall take where there is no widower or beneficiary, and such being the fact here, summary judgment in favor of the Guardian ad Litem should be granted.

MOTION TO STRIKE JURY DEMAND AND ADVANCE CAUSE FOR TRIAL:

Although the Group Life Act of 1954 authorizes suit against the United States and invokes jurisdiction the District Court and Court of Claims, there is no right to jury trial on any matter arising under that Act. Since, the stakeholder has interpleaded and a substantial sum is being held by the Clerk, prompt disposition of the case is advisable since the issue is limited.

/s/ Edward J. Skeens
Guardian ad Litem

[Certificate of Service]

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83 [Filed March 25, 1958]

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

The plaintiff herein, Willie Brantley, opposes the granting of the motion for summary judgment in favor of the Guardian ad Litem for the minor children herein, and for grounds of such opposition, respectfully shows to this Honorable Court the following matters and things:

I. There is no legal basis upon which payment to the minor children can be predicated or supported.

II. The Act is clear, unambiguous and clearly manifests the intent of Congress in setting up a statutory scheme of beneficiaries and this congressional mandate must be followed. The surviving spouse is the preferred claimant and where there is such a person, then payment must be made, under the act, to such surviving spouse. In the instant

case, it is respectfully submitted that Willie Brantley is the surviving spouse, and as such is entitled to the proceeds of this insurance. It is conceded that there was a valid ceremonial marriage by and between the plaintiff Willie Brantley and the deceased, Elizabeth and there is no evidence in the record of any divorce or proceedings seeking divorce. Considering these admitted facts, it would appear that the plaintiff is the proper claimant as the surviving spouse and payment could not legally be made to any other person under the Act.

84 The movant, guardian ad litem, relies upon an alleged marriage by and between the plaintiff and one Sarah Gadsden as depriving the plaintiff of his status as surviving spouse. The relationship and alleged status between the plaintiff and Sarah Gadsden is a void nullity of no legal effect or signification, and could not operate to dissolve the then existing marriage between the plaintiff and the deceased. This proposition is so well established in Anglo-American jurisprudence that no citation of authority is required.

The movant relies upon the presumption of validity of the ceremonial marriage as defeating the rights of the plaintiff as surviving spouse. However, this presumption as to validity of the Gadsden-Brantley marriage cannot be indulged in the face of the positive, overwhelming evidence in the record that it was a nullity.

The cases relied upon by the movant are all decided upon the basis and rationale that the presumption of validity of a second marriage is sufficient unless it is overcome by strong, convincing counter-vailing evidence. This record demonstrates such evidence which demonstrates that the marriage of Gadsden-Brantley and Mathis-Elizabeth Brantley are void and of no legal effect. This evidence is as follows:

1. Affidavit of William Brantley, the legitimate son of the plaintiff and the deceased which show that only place of residence of the deceased, other than South Carolina, which had a constitutional prohibition on divorces until the constitutional amendment of 1951, was the District of Columbia.

2. The certificate of the Clerk of the U. S. District Court for the District of Columbia which shows that a search of the records of the Court discloses no divorce proceedings instituted or maintained in the name of the deceased against the plaintiff.

85 3. The affidavit of the plaintiff that he was never served with a summons or other process indicating that an action for divorce had been filed against him.

4. The acknowledgement by Herbert Mathis in the claim for proceeds of insurance that the children born to him and the decedent were illegitimate.

Considering the above evidence in this record it is apparent that everyone concerned with the lines of these parties considered Willie Brantley as the husband of the deceased, and there existed during the lifetime of Elizabeth Brantley and Willie Brantley an insuperable impediment to either of them entering into a valid marriage common-law or ceremonial, with any other party.

III. Under analagous provisions of National Service Life Insurance payment to the children would be prohibited by virtue of their illegitimate status. The judicial history and experience of the Federal Employees Group Life Insurance Act has, of necessity, been limited, and the Court must be largely persuaded as was the Court in the Smith case, by interpretations of similar acts establishing a comprehensive system of insurance in which the Federal Government was a participant. Title 38, Section 802 (g) prohibits the payment of proceeds of insurance to illegitimate children unless such illegitimate children were designated beneficiaries

> "The insurance shall be payable only to a widow, widower, child (including a stepchild or illegitimate child IF DESIGNATED AS BENEFICIARY BY THE INSURED), parent, brother or sister of the insured."

The applicability of other Federal statutes and regulations to the provisions of this Act is set forth in Section 2093 of this Act, especially insofar as the prohibition of payments to certain claimants is concerned,

"...or if payment within that period is prohibited by Federal statute or regulation, payment may be made in order of precedence as if such person had predeceased the employee."

86 Considering this provision, if the contention of the guardian ad litem are upheld, the only party who could validly be paid the proceeds of insurance would be William Brantley, the only legitimate child.

IV. Assuming arguendo that the Court should find that the plaintiff Willie Brantley is not the surviving spouse, and therefore not entitled to the proceeds of insurance; such a finding would necessarily imply that any impediment to the existence of a valid common-law marriage between Herbert Mathis and Elizabeth Brantley was removed and accordingly Herbert Mathis would be entitled to the proceeds of insurance as the surviving spouse.

V. In view of the points in opposition set forth herein, and the further matters and things as may be alleged and presented upon a hearing of this motion, the plaintiff respectfully prays that the same be denied.

/s/ Julius W. Robertson
Attorneys for Plaintiff

* * *

[Certificate of Mailing]

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87 AFFIDAVIT OF WILLIAM BRANTLEY
also known as William Braddley

DISTRICT OF COLUMBIA, ss:

Before me the undersigned notary public, personally appeared one William Brantley, also known as William Braddley, who deposed and said as follows:

1. That he is the natural and legitimate son of the deceased Elizabeth Brantley (Mathis) and the plaintiff in this case, Willie Brantley; and that he was born on February 1, 1933, in Allendale, South Carolina.

2. That his mother, the deceased Elizabeth Brantley (Mathis), moved to Washington, D. C. in 1941 and established residence there; and that thereafter the affiant came to Washington and lived with her for a

period of approximately nine months in 1945.

3. That at the time and place as last aforesaid the deceased Elizabeth Brantley (Mathis) was living with one Herbert Mathis.

4. That the affiant lived with the deceased Elizabeth Brantley (Mathis) his mother, from 1950 to 1952, at which time the affiant moved to a room nearby in the neighborhood and visited his mother frequently.

5. That at all times since leaving South Carolina, Elizabeth Brantley (Mathis) mother of the affiant, was a resident of the District of Columbia and did not at any time, to his knowledge, obtain a divorce from his father, Willie Brantley.

/s/ William Brantley

[JURAT dated October 23, 1957.]

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88 [Filed March 25, 1958]

MOTION FOR SUMMARY JUDGMENT
IN FAVOR OF WILLIE BRANTLEY

The plaintiff, Willie Brantley moves this Honorable Court to enter a judgment in his favor pursuant to Rule 56, Federal Rules of Civil Procedure and for grounds of such motion respectfully shows to this Honorable Court the following matters and things:

1. There is no genuine issue as to any material facts herein. The pleadings on file demonstrate that only a question of law is involved herein.

2. The plaintiff relies on the pleadings and other papers on file herein and submits to this Honorable Court that the plaintiff is entitled to a judgment in his favor.

3. Such other and further matters and things as may be alleged and presented upon a hearing on this matter.

/s/ Julius W. Robertson
Attorneys for Plaintiff

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89 POINTS AND AUTHORITIES

Federal Employees Group Life Insurance Act, 1954

Title 5, Section 2093, U.S.C.

Title 38, Section 802(g)

U.S. v. Leary, 90 F.Supp. 590

Friedenwald v. do., 57 App.D.C. 13

Thomas v. Murphy, 71 App. D.C. 69

Erickson v. Stoyner, 90 App. D.C. 278

[Certificate of Mailing]

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90 [Filed March 27, 1958]

OPPOSITION OF GUARDIAN AD LITEM TO MOTION FOR SUMMARY JUDGMENT IN FAVOR OF WILLIE BRANTLEY

The Guardian ad Litem opposes the motion for summary judgment in favor of Willie Brantley, and as ground therefor refers to the following:

The Guardian ad Litem adopts and incorporates by reference his points and authorities heretofore filed in support of his motion for summary judgment, as an adequate opposition to said motion filed by plaintiff.

Those points and authorities that are hereby incorporated conclusively show that Willie Brantley's claim is barred by public policy by virtue of his own admitted bigamous marriage; furthermore, he is not the widower within the meaning of the F.E.G.L.I. Act of 1954; and that if he were a spouse of deceased at the time of her death, he abandoned such status. Brantley is conclusively presumed to be validly married to Sarah Gadsen at the time of the death of the Deceased.

/s/ Edward J. Skeens
Guardian ad Litem

[Certificate of Service]

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96 [Filed May 28, 1958]

ORDER

Upon consideration of the motion for summary judgment filed by Edward J. Skeens, Guardian ad Litem for the minor children in this cause, the points and authorities attached thereto; the motion for summary judgment filed by Willie Brantley, plaintiff, with his affidavit and authorities attached thereto; the motion for summary judgment, filed by Herbert Mathis, with affidavits and authorities attached thereto; the reply of the stakeholder, Metropolitan Life Insurance Company, a Corporation, taking no position concerning the disposition of said motion; and after appearance by counsel in open Court on May 19, 1958, with all parties stipulating that there was no genuine issue of fact raised by the pleadings, exhibits, interrogatory, affidavits and motions filed in this cause; and after oral arguments by counsel for all parties herein;

IT APPEARING TO THE COURT that the insured, Elizabeth Brantley, did not designate a beneficiary on her policy of insurance governed by the Federal Employees' Group Life Insurance Act of 1954, Title 5 U.S.C. § 2093; that Herbert Mathis was not the surviving spouse of Elizabeth Brantley by an alleged common law marital relationship; and therefore, Herbert Mathis is not a "widower" within the meaning of the Federal Employees' Group Life Insurance Act of 1954, Title 5, U.S.C. § 2093; that Willie Brantley, having been first married to insured, Elizabeth Brantley, in a ceremonial marriage solemnized in Allendale, South Carolina on April 16, 1932, and that said marriage was not terminated by divorce or death; entered into a second and subsequent marriage to one, Sarah Gadsen, the said Willie Brantley is thereby

97 estopped from asserting a claim to the proceeds of the Federal Employees' Group Life Insurance, Title 5, U.S.C. § 2093; and that the Guardian ad litem on behalf of the minor children of insured, Elizabeth Mathis, is otherwise entitled to payment of the insurance proceeds heretofore interpleaded in this cause having established a valid claim in the order of precedence provided by the Federal Employees' Group Life Insurance Act of 1954, Title 5, U.S.C. # 2093; it is by the United States

District Court for the District of Columbia, on this 28th day of May, 1958,

ORDERED, that the motion of the Guardian ad litem for Summary Judgment, be and the same hereby, is granted; and that the motions of Willie Brantley, the plaintiff, and Herbert Mathis, the defendant, for summary judgment be and the same hereby, are denied; and

IT IS FURTHER ORDERED, that Edward J. Skeens, Esquire, shall be paid the sum of Eight Hundred Dollars ($800.00) for services rendered as Guardian ad litem in this cause, such services having been terminated upon entry of this order; whereupon Wm. S. Thompson, Esquire, a member of the bar of this Court, is hereby appointed to serve as Guardian for the minor children in this cause and their respective estates in the proportionate insurance proceeds awarded to them herein; and that such Guardian is hereby appointed and authorized to collect the assets thereof and account therefor, provided he file an undertaking with surety approved by the Court in the sum of $8000.00 conditioned for the faithful performance of the trust in him reposed, and that he be allowed such fee for his services as the Court may direct; and

IT IS FURTHER ORDERED, that judgment is hereby entered in favor of the adult son of the deceased, William Brantley, also known as William Bradley, in the sum of One Thousand twenty-eight Dollars and fifty cents ($1,028.50) representing a one-seventh interest in the net insurance proceeds interpleaded in this cause, for which the said William
98 Brantley may have execution with accordance of law; and

IT IS HEREBY FURTHER ORDERED, that the Clerk of this Court is hereby authorized to disburse the sum of $800.00 to Edward J. Skeens, upon due execution and presentation of a receipt for payment of same; to disburse the sum of $1,028.50 to William Brantley, upon due execution and presentation of a receipt of payment for same; and the entire remaining balance to be disbursed to the duly authorized Guardian named in this order upon due execution and presentation of a receipt of payment for same; and

IT IS FINALLY ORDERED, that the oral motion of defendant, Metropolitan Life Insurance Company, a corporation, for a reasonable

attorney fee, be and the same hereby, is denied.

/s/ Edward M. Curran
United States District Judge

[Certificate of Mailing]

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99 [Filed June 10, 1958]

NOTICE OF APPEAL

Notice is hereby given this 10th day of June, 1958, that Willie Brantley hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of May, 1958, in favor of the Guardian ad Litem, Edward J. Skeens against said Willie Brantley.

ROBERTSON & ROUNDTREE

/s/ Julius W. Robertson
Attorney for Plaintiff

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NOTICE TO CLERK

Mail copies to:

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Washington 1, D. C.

DRURY, LYNHAM & POWELL
Colorado Building
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EDWARD J. SKEENS
1500 Mass. Ave., N. W.
Washington, D. C.